

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Kevin Hiller

v.

Civil No. 15-cv-480-JL

Esker L. Tatum, Warden, Federal
Correctional Institution, Berlin,
New Hampshire

REPORT AND RECOMMENDATION

Before the court is Kevin Hiller's petition for a writ of habeas corpus (doc. no. 1), brought pursuant to 28 U.S.C.

§ 2241. The matter is before the court for preliminary review, to determine whether the petition is facially valid and may proceed. See Rule 4 of the Rules Governing Section 2254 Cases ("§ 2254 Rules"); § 2254 Rule 1(b) (authorizing court to apply § 2254 Rules to § 2241 petitions); LR 4.3(d)(4)(A). In his petition, Hiller challenges the Bureau of Prison's calculation of his federal sentence, imposed on December 19, 2008, in the Eastern District of Pennsylvania. See United States v. Hiller, No. 2:06-cr-00096 (E.D. Pa. Dec. 19, 2008), ECF No. 204.

Discussion

Prisoners are required to fully exhaust administrative remedies before petitioning for a writ of habeas corpus pursuant to § 2241. See Santiago-Lugo v. Warden, 785 F.3d 467, 475 (3d Cir. 2015). The court notes that Hiller filed an administrative

grievance with the Bureau of Prisons ("BOP"), seeking the relief he seeks in the instant petition: the determination that his federal sentence should have been imposed concurrently with one or more state court sentences, to which he was sentenced before and after his federal sentence was imposed. Hiller asserts here that his administrative remedies have been exhausted by the BOP's denial of his request on April 23, 2014. However, according to a document Hiller has filed along with his petition, a "Part B - Response" from the Administrator of National Inmate Appeals, see Doc. No. 1, 26, his request was not denied on that date. Instead, Hiller was notified on April 23, 2014, that the BOP intended to seek the position of the sentencing judge as to Hiller's request, and that he would be notified of the results of his request at a later date.

The court has reviewed Hiller's criminal case docket, to the extent it is available on PACER. The BOP, on March 14, 2014, sought the input of the sentencing court concerning the court's recommendation as to the calculation of Hiller's sentence. Hiller has filed a request in the sentencing court seeking that court's recommendation to the BOP that Hiller's federal sentence be construed to run concurrently with his state sentences. A hearing on the matter is scheduled in the Eastern District of Pennsylvania on May 11, 2016.

It therefore appears that Hiller has not completed the administrative grievance process in this matter, and that the claims before this court are not exhausted. Accordingly, this court finds that Hiller's § 2241 petition in this court should be dismissed as unexhausted. The dismissal should be without prejudice to refiling if Hiller is unsuccessful in obtaining the relief he seeks in the sentencing court and in the administrative grievance process.

Conclusion

For the foregoing reasons, the court recommends that the § 2241 petition be dismissed without prejudice. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See Garayalde-Rijos v. Mun. of Carolina, 747 F.3d 15, 21-22 (1st Cir. 2014).



Andrea K. Johnstone
United States Magistrate Judge

March 21, 2016

cc: Kevin Hiller, pro se
Seth R. Aframe, Esq.